

REMARKS

The Office Action mailed August 28, 2003 has been received and the Examiner's comments carefully reviewed. Claims 18-22 have been cancelled. Claims 1-17 and 23-25 are currently pending. Applicant respectfully submits that the pending claims are in condition for allowance.

Rejections Under 35 U.S.C. §103

The Examiner rejected claims 1-17 and 23-25 under 35 U.S.C. §103(a) as being unpatentable over DeOca et al. (U.S. Patent 4,785,676). Applicant respectfully traverses this rejection.

The Examiner states the DeOca shows the basic retrofitted elbow pipe with a sampling septum; however DeOca does not teach or suggest various features recited in the claims (e.g. a bag, plural openings, tapered sampling body, etc).

In rejecting the claims, the Examiner asserts that the various recited features are obvious expedients, and appears to suggest that to modify DeOca to include the recited features would have been obvious. The Examiner relies on numerous alleged motivations to modify DeOca (e.g. for better sealing, enhanced fitability, and better sampling control) to form the basis for this rejection.

Nowhere does DeOca teach or suggest that the DeOca fitting 20 would benefit from a better sampling control, better sealing, or better fitability to motivate one skilled in the art to modify DeOca to include Applicant's recited features. From Applicant's perspective, it appears the Examiner has used Applicant's own disclosure as a starting point, and worked backwards to reverse-engineer a list of motivations to modify. This is clearly improper.

Referring to the present claims, the continuous sampling arrangement of independent claim 1 recites a bag within which a sample is collected, a tube in fluid communication with the bag, and a needle in fluid communication with the tube. The

continuous sampling system of independent claim 17 recites a sampling assembly that facilitates continuous fluid flow sampling from a fluid transport structure to a collection reservoir. The retro fit kit of independent claim 23 recites a closed sampling container and a tube; wherein the kit obtains and collects an aseptic continuous sample of fluid with the container. The system of claim 24 recites a closed conduit connected to a penetrating body and a sample holding container for collection of a continuous sample of fluid.

DeOca neither discloses all the recited limitations nor provides the motivation to modify the fitting 20 to include the recited limitations of a continuous sampling arrangement, kit, or system. Rather, the fitting 20 of DeOca discloses only a cover 120 having a plurality of stoppers 24 designed for receipt of a needle N to obtain a discrete fluid sample.

Referring to the present specification on page 2, lines 24-27, known devices for discrete sampling of fluid involve inserting a needle through a seal to extract a discrete sample size limited to the volume of a hypodermic needle and syringe, such as the fitting 20 of DeOca. These known discrete sampling techniques have not proven to be readily adaptable to continuous sampling techniques. The continuous sampling arrangement, kit and system recited in the present claims address at least this problem.

DeOca does not teach or suggest all the claim limitations, and does not provide any motivation to modify the disclosed fitting to include the recited claim limitations. At least for these reasons, Applicant respectfully request withdrawal of this rejection.

SUMMARY

It is respectfully submitted that each of the presently pending claims (claims 1-17 and 23-25) is in condition for allowance and notification to that effect is requested. The Examiner is invited to contact Applicant's representative at the below-listed telephone number if it is believed that prosecution of this application may be assisted thereby.

Although certain arguments regarding patentability are set forth herein, there may be other arguments and reasons why the claimed invention is patentably distinct. Applicant reserves the right to raise these arguments in the future.



Date: Jan. 22, 2004

Respectfully submitted,

MERCHANT & GOULD P.C.
P.O. Box 2903
Minneapolis, Minnesota 55402-0903
(612) 332-5300

Karen A. Fitzsimmons
Karen A. Fitzsimmons
Reg. No. 50,470
KAF:cjm